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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1927.

No. 57

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Petitioner,

vs.

WELLS DICKEY TRUST COMPANY, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF ELMER E. ANDERSON, DECEASED,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

I.

Under the Federal Employers' Liability Act the Cause of Action Does Not Vest in the Personal Representative.

The argument of counsel for respondent, page 3, that the cause of action created by the Federal Employers' Liability Act *vests in the personal representative*, can-

not be reconciled with the following decisions of this court:

> The cause of action under the Federal Act is not in the personal representative and a prior judgment against the beneficiary is a bar to suit by the administrator. *C. R. I. & P. Ry. Co.* v. *Schendel*, 270 U. S. 611.
>
> Where a sole beneficiary brought suit in her individual capacity, an amendment describing her as administratrix did not state a new cause of action and might be allowed even though the period of limitation had run. *M. K. & T. Ry.* v. *Walt*, 226 U. S. 570.
>
> The cause of action for death under the Federal Act accrues on the death of the employee and the limitation begins to run from that time, regardless of when an administrator may be appointed. *Reading Co.* v. *Koons*, 271 U. S. 58.

Counsel do not explain what becomes of the cause of action, under their theory, prior to the appointment of the administrator. It must have vested in some one at the time the limitation began to run. As the cause of action accrues on the death of the employee and the beneficiary is the real party in interest, it follows that the right of the beneficiary can accrue only at the time of the death of the employee.

Counsel are driven to the position that the rights of the beneficiaries do not accrue until the time of trial. They argue, page 3, that any *recovery* goes to the beneficiaries named in the order stated in the act. If so the word "*surviving*" in the statute must refer to the time of the recovery of damages. The only death mentioned in the statute is the death of the employee and to that alone can the word "surviving" refer. In the *Koons* case the court said, page 60, that the Federal Act "*gives a right of action to the personal representative of the surviving spouse and children of such employee, or if*

there are no such survivors, then for the benefit of the next of kin." The *survivors* are such preferred beneficiaries as survive *the deceased employee.*

At page 62 in the *Koons* case the court said: "*At the time of death there are identified persons for whose benefit the liability exists.*" Rights of beneficiaries must accrue then or not at all.

The mother's claim accrued at once on Anderson's death. The statute makes no provision for later events; it makes no reference to deaths of beneficiaries. It does not provide for distribution of the damages recovered, as is done by Lord Campbell's Act. It provides for several classes of beneficiaries, but the actual and sole beneficiary is determined at the death of the employee. That the mother was the sole beneficiary at the time of death of Anderson is settled by *St. L. S. F. & T. Ry. Co.* v. *Seale*, 229 U. S. 156, *Taylor* v. *Taylor*, 232 U. S. 663, and *N. O. & N. E. R. Co.* v. *Harris*, 247 U. S. 367. Counsel do not claim that the right of the mother was transmitted to the sister. This suit is not for damages sustained by the mother. It is a different cause of action, for the damages sustained by the sister. Such a right of action could have arisen only if the sister had been the sole beneficiary at the time of the employee's death.

Counsel say, page 12, that they fail to grasp the vital significance which we seek to attach to the words "if none." All the conditions under which this statutory action accrues at the time of the death of the employee, must necessarily relate to that time. The controlling words "if none" require that a sister of a deceased employee, claiming the action for the death, must show that at the time the action accrued there was no widow, child or parent.

II.

The Judgment in This Case Is on a Different Cause of Action from That Which Arose on the Death of the Employee.

On page 5 counsel boldly deny that the judgment in this case is on a different cause of action from that which arose on the death of the employee. They ignore Judge Taft's opinion in the *Hooper case* (92 Fed. 820), that under such a statute a suit by an administrator for one beneficiary is a different suit from a suit by the administrator for another beneficiary and that a change of beneficiaries, under such a statute, changes the suit, the amount of recovery and states a new and different cause of action. All that counsel say on pages 5 and 6 about there being but a single wrongful act is applicable to the fact in the *Hooper* case, but counsel do not refer to the other essential element of a cause of action of this character, *i. e.*, the pecuniary injury sustained by the particular beneficiary.

If a suit had been brought by an administrator of Anderson's estate for the benefit of Anderson's mother and she had died before the trial, an amendment setting up the death of the mother and alleging that the sister was Anderson's dependent next of kin, *would have stated a new cause of action*, the damages would have been different and the party in interest would have been different. There cannot be a new cause of action for the benefit of the sister, different from the cause of action of the mother, because but a single cause of action for the death of an employee accrues at his death. At the time the cause of action for Anderson's death accrued, his mother was the sole beneficiary. Under the statute, the

only right to be compensated in damages was *her* right to be compensated for *her* loss. At Anderson's death, the sister had no right to damages for any loss *she* might have sustained by reason of her brother's death. Nothing in the statute gave her any rights on the death of her mother.

III.

The Sister Did Not Became Entitled to the Benefit of the Suit By or Through the Death of the Mother.

Counsel say on page 11: "After her death (death of mother) *the sister thereby becoming entitled* to the fruits of the suit, etc." However, they do not explain *how* the sister became entitled to the fruits of the suit. Not through inheritance from her mother; the judgment is not for damages which the *mother* sustained by reason of Anderson's death. The death of the mother could not operate to transmit the right of action to the sister. Surely the statute does not create new causes of action for successive beneficiaries in turn. The possibility of such construction is precluded by the accrual of the cause of action on the death of the employee and the running of the limitation from that date.

IV.

At the Time of the Death of the Employee There Were Not Two Beneficiaries; the Mother Was the Sole Beneficiary. The Sister Had No Right of Action and the Death of the Mother Did Not Deprive the Sister Thereof.

On page 16 counsel make an astonishing statement, as follows:

> "At the time of such death (referring to the death of the employee) there were *two* beneficiaries coming within the terms of the Act, the mother coming within the second class named and the sister within the third class."

This assertion utterly disregards the plain language of the statute and the decisions of this court in many cases, for example, in the *Seale* case where this court said that as there was a surviving widow, the father and mother of the deceased were not beneficiaries under the Federal statute. In the *Harris* case a dependent mother could not recover because the widow, although she had abandoned the deceased, was sole beneficiary under the statute. At the time of Anderson's death there were not two beneficiaries; there was but *one*. The mother was the only beneficiary. The cause of action was for the *mother's loss*, to the complete exclusion of any loss the sister might have sustained.

Counsel then ask:

> "Why should the circumstance that the beneficiary in the second class (mother) died before recovery could be had, *deprive* the other beneficiary of a recovery for the wrong done?"

The death of the mother did not *deprive* the sister of a recovery. The sister never had any right or interest

in the cause of action. The mother having survived the deceased, the statute did not provide a recovery for any loss the sister might have sustained by her brother's death. She had nothing to be *deprived* of and was in no different position whether her mother lived or died. *Is it not more pertinent to inquire how the sister would acquire, through the death of the mother, a right of action which she otherwise did not have?*

V.

State Statutes Like the Federal Act Have Been Construed Uniformly as Creating a Single Cause of Action, which Accrues at the Time of the Death, and as Giving the Beneficiary a Right of Action Then or Not at All.

In every other case but this, a statute like the Federal Act, classifying beneficiaries with priorities, has been construed as creating a single cause of action which accrues at the time of the death, and a giving the beneficiary a right of action then or not at all. Counsel seek to brush aside all these decisions by asserting on page 2, and again on page 7, that the state statutes there under consideration are different from the Federal Act, but counsel do not point out the alleged differences.

In dealing with these decisions in our original brief we made long quotations to demonstrate that each statute considered had priority provisions like the Federal Act and that under such statutes the courts have held unanimously that the right of action accrues at the death of the employee, that the administrator is but a nominal party, and that the recovery is for the pecuniary loss of the particular beneficiary to whom the right accrues, who

is the real plaintiff; all in accord with the decisions of this court as to the character of the rights created by the Federal Act and the time of their inception.

VI.

Differences Between the Federal Employers' Liability Act and Lord Campbell's Act.

The *Woodward* case (23 Wis. 400) was decided in 1868 and the other leading cases antedate the Federal Act many years. When Congress adopted the particular type of statute classifying beneficiaries, with priorities, there was authoritative and well reasoned construction thereof. Counsel admit, page 9, that the judicial construction already placed on a statute by a state court is presumed to have been adopted by Congress with such statute, but counsel argue that this rule should be applied to Lord Campbell's Act. On pages 7 to 9 counsel assert that there can be no difference between the Federal Act and Lord Campbell's Act because this court stated in the *Vreeland* case (227 U. S. 59), that the two statutes were "essentially identical." In the *Vreeland* case this court was not comparing the provisions of the two statutes regarding the rights of beneficiaries. The quotation on page 8 of respondent's brief relates to the question whether the Federal Act gives a new right of action for death or continues the right of action which the injured person had. This appears from a sentence counsel have omitted from their quotation, using asterisks. In this omitted part, the court goes on to say that Lord Campbell's Act has been construed as creating a new cause of action to compensate the family for pecuniary loss resulting from the death and not as continuing

any right of action of deceased for personal injury. Of course in that respect Lord Campbell's Act and the Federal Act (prior to the Amendment of 1910) were essentially identical but their respective provisions regarding beneficiaries are strikingly different, as comparison will demonstrate:

Federal Employers' Liability Act.

"Every common carrier by railroad while engaging in commerce between any of the several states . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce or, in case of the death of such employe, *to his or her personal representative, for the benefit of the surviving widow or husband and children of such employe; and, if none, then of such employe's parents; and, if none, then of the next of kin dependent upon such employe*, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment." (Act of April 22, 1908, c. 149, Sec. 1, 35 Stat. 65; Sec. 51, c. 2, Title 45, "The United States Code," Act of June 30, 1926).

The Federal Employers' Liability Act:

1. Classifies the relatives on the basis of their natural dependence.
2. Does not provide for *division* among the relatives, of the amount *recovered*; is not a statute of distribution.
3. Restricts the right of action to such *preferred* class of beneficiaries, if any, *as survive the deceased*, and excludes the more remote classes.
4. The particular relatives who become sole beneficiaries are determined by the facts in each case *at the time of the death of the employe*.
5. The damages are limited to the pecuniary loss sustained *by the particular beneficiary* who has the right of action; losses of more remote relatives are not included.
6. The statute makes no provision for bringing in remote beneficiaries in case a preferred beneficiary should die while action is pending. If remote beneficiaries acquire no right of action *at the death of the employe* they cannot acquire same *through the death of a preferred beneficiary*.

Lord Campbell's Act.

"Whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof then, and in every such case, the person who would have been liable if death had not ensued *shall be liable to an action for damages*, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

"And it be enacted, *that every such action shall be for the benefit of the wife, husband, parent, and child of the person* whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action *the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties, respectively*, for whom and for whose benefit such action shall be brought; and *the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury, by their verdict, shall find and direct.*"

9 and 10 Vict. c. 93; Tiffany Death by Wrongful Act. 2d Edition. 485.

Lord Campbell's Act:

1. Makes no classification of beneficiaries; gives them concurrent rights.
2. Provides for *division* among the beneficiaries of the amount *recovered*; such division to be made *by the jury*, is a statute of *distribution*.
3. Provides an action for *all* beneficiaries, the jury to apportion the damages to the respective parties.
4. The respective rights of the beneficiaries are not determined *until the verdict of the jury*.
5. The damages include *all pecuniary losses* sustained by *all enumerated relatives*.
6. The statute provides for *all* the beneficiaries *collectively* and the death of one has no effect on the rights of any of the others.

VII.

Congress Rejected Specific Provisions and Amendments, Which if Adopted Would Have Made the Federal Act Like Lord Campbell's Act. The Minnesota Court Has Construed the Federal Act as if It Contained Such Rejected Provisions.

It is not accidental that the Federal Act does not contain a provision like Lord Campbell's Act for dividing the judgment among the surviving beneficiaries. The legislative history of the Federal Act shows that the English statute was referred to repeatedly in committee reports and debates; that several amendments were introduced which, if adopted, would have made the recovery distributable.

Counsel make no reply to our Point III that the Supreme Court of Minnesota has construed the Federal Employers' Liability Act in this case as if it contained specific provisions which were proposed in Congress, but rejected. Counsel do not dispute the legislative history of the statute outlined on pages 37 to 45 of our brief; they do not deny that under the authorities the rejection by Congress of specific provisions contained in the bill as originally reported and the rejection of proposed amendments are conclusive that the act should not be so construed as to include such provisions.

VIII.

No Court but the Supreme Court of Minnesota Has Construed a Statute Like the Federal Act as Giving a Right of Action, on the Death of the Beneficiary, to Remote Kin Who Were Excluded When the Cause of Action Accrued.

The court below stands alone on the theory that under statutes like the Federal Act, remote next of kin, who admittedly are excluded when the cause of action accrues and during the life of the beneficiary, may have a right of action on the death of the beneficiary. We have been unable to find any case in which such a statute has been so construed. Counsel for respondent have cited none. They rely on decisions dealing with statutes like Lord Campbell's Act, which plainly provide for *distribution* of the amount recovered among beneficiaries existing at the time of suit.

In *Morris* v. *Spartanburg Ry. G. & E. Co.* 70 S. C. 279, 49 S. E. 854, relied on by the Supreme Court of Minnesota and quoted from on page 13 of respondent's brief, the Supreme Court of South Carolina was construing a state statute quoted in the opinion of the court in part as follows:

> "and in every such action *the jury give such damages*, including exemplary damages, where such wrongful act, neglect or default was the result of recklessness, willfulness, or malice, as they may think *proportioned to the injury resulting from such death to the parties, respectively, for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before mentioned parties in such shares as they would have been entitled to of the deceased had died intestate* and the amount recovered had been personal assets of his or her estate."

The *Morris* suit was brought for the benefit of all the heirs at law of the deceased and the South Carolina court stated, as quoted on page 14 of respondent's brief, that the action was prosecuted "for the benefit of *whoever may be entitled to participate in the distribution of such recovery* as may be had." The Federal Employers' Liability Act contains no provision like the South Carolina statute, or like Lord Campbell's Act, that the amount *recovered* shall be *divided* among the relatives. There is no such distribution under the Federal Act.

In *Garrard* v. *Mahoning Valley Ry. Co.* 100 Ohio State, 212, 126 N. E. 53, relied upon by the Supreme Court of Minnesota and quoted from on page 13 of respondent's brief, the Supreme Court of Ohio was dealing with a statute which it quoted in part as follows:

> "It (the action for death) must be brought in the name of the personal representative of the deceased person and the jury may give such damages as it may think *proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit the action was brought.*"

Referring particularly to this language of the statute, the Supreme Court of Ohio held that the right of action was *lodged in the personal representative* for the benefit of the class of beneficiaries *existing at the time the personal representative instituted suit.*

IX

Congress Was Greatly Interested in Who Might Be Rec ompensed for the Death of a Railway Employee

The argument of counsel, page 3, that Congress was not particularly interested in who might be recompensed for the death of a railway employee, utterly disregards the legislative history of the statute. (Petitioner's Brief,

pages 37-45), from which it appears that the most careful consideration was given to the question of who should be entitled to recovery and how the act should be worded in that regard. If the statute had been intended to require payment to someone in every case, as counsel seem to think, Congress would have adopted the so-called penalty type of statute, in force in Massachusetts, Missouri, and some other states, fixing a definite sum to be paid regardless of survivorship, relationship or dependency.

X.

This Case Does Not Involve Any Question of Strict Construction or Liberal Construction.

Counsel argue, page 14, that the statute should be liberally construed, but they do not dispute the authority of *Doe* v. *Considine*, 6 Wall. 458, that where a statute is unambiguous the court will not attempt to qualify it by construction.

This case does not involve any question of strict construction or liberal construction. The act in question creates a new right of action and prescribes the circumstances under which it shall arise. The statutory plan is exclusive. Parties claiming under the statute are confined to its terms and must bring themselves strictly within the statutory requirements necessary to confer the right. The cause of action accrues only for such persons as the statute permits and they alone can recover. There is no question of strict construction about that; it amounts only to enforcing the plain provisions of a statute, or rather requiring those who claim the benefit of the statute to establish that they are entitled to it.

Outside the statute, the sister had no right; having asserted a right under the statute, she must bring herself within its terms.

XI.

This Court Will Not Piece Out the Statute to Give a Right of Action Beyond Its Terms.

Counsel for respondent have conjured up hypothetical cases (page 4) to illustrate what might happen under a statute that does not permit successive recoveries by all the various classes of beneficiaries, in turn. Counsel infer that the construction demanded by the plain language of the Federal Act would be harsh, inequitable and inconsistent with its humane purpose. Of course this court is dealing with the facts of *this* case, not with any imaginary situation. However appealing might be the supposed cases of the invalid wife, infirm parents, etc., for whom counsel express such disinterested anxiety, the court will not piece out the statute to give a right of action beyond the terms of the law. In *Betz v. Kansas City Southern*, 284 S. W. 456, where recovery for the death of a wife was denied because her husband, who was the preferred beneficiary, sustained fatal injuries in the same accident and died three hours afterwards, the Supreme Court of Missouri said that an argument that such construction of the statute would enable the defendant to escape liability, should be directed to the legislature, and in *Clark v. Railroad Company*, 219 Mo. 531, the court said:

> "*In determining the hard case put by counsel, it is well to bear the adage in mind that hard cases make bad law—are the quicksands of law.*"

On its face, the Federal Act does not provide a recovery for each and every relative who might have been de-

pendent upon a deceased employee. The liability created is limited strictly to those relatives who, in common experience, have been primarily dependent upon the wage earner for their support. In the average family the wife and children have first claim on the earnings of the husband and father. The statute provides that if a widow or children survive the employee, the cause of action is for them alone, for the pecuniary loss they have sustained; parents, brothers and sisters are excluded no matter how much they may have relied upon the deceased for support. In such a situation the parents are in no different position if an invalid wife should die of the shock of learning of her husband's death, as suggested by counsel, because the parents get no right of action whether the widow lives or dies. If the employee had no wife or children his parents naturally were in closest relation to him. The statute assumes that in such case the earnings of deceased have been devoted principally to them and the right of action is given for their exclusive benefit, without regard to more remote dependent relatives. The classification adopted by Congress makes the railroad liable only to those who stood in the closest relation to the employee in his lifetime. As the statute creates a single cause of action for the exclusive benefit of those who have been the principal objects of the employee's own efforts, it is not surprising that remote relatives, thus excluded at the time the cause of action accrues, should not have a cause of action of their own if the preferred beneficiary should die. Counsel seem to think that such relatives should have been given greater consideration in case of the death of the preferred beneficiary but the statute does not contemplate *any* recovery for such remote dependents *under any circumstances*.

XII.

The Sister Was Not Dependent, Within the Meaning of the Statute.

There is nothing in the situation of the sister for whom this judgment was rendered which would support any pathetic appeal to the sympathies of the court, if same were proper. She is a strong, mature, able-bodied woman, who supported herself in Chicago both before and after the death of her brother and who, from her own testimony, would have been supporting herself at the time of her brother's death had he not paid her to return home and keep house for him and the aged mother.

Counsel state, page 17, that there is not the slightest foundation in the record for our claim that the sister was not dependent within the meaning of the statute. However, the trial court said that the question of her dependency "*was not free from doubt.*" (Rec., 100.)

Counsel further state on page 17 that in cross-examining the sister we attempted to place her in the attitude of a paid servant. The record showing the relations of the brother and sister is made up principally of her direct examination and the direct testimony of the witness Mary Le Claire (Rec., 62-67) produced by the sister to corroborate her statement that the brother had gone to Chicago and persuaded her to return home with the promise that he would pay her a great deal more money than she could earn in Chicago. (Rec., 63.) The trial court summarized the evidence as follows:

> "In the case at bar it appears that the beneficiary was a sister of the deceased, 33 years of age, and that she had gone from the family home at Otes-

ton, Iowa, to Chicago, where she was employed for a number of years and entirely supporting herself. The deceased brother was a fireman employed by the defendant company, receiving an average wage at the time of his death of $143 per month, and living at the family home at Creston, Iowa, with his mother and sister. Both mother and sister were in poor health and needed care and attention. Deceased then went to Chicago and induced his sister to give up her employment and come home and take care of the household for him and the mother and sister. She did so, living there until the time of the decease of the brother, who was killed in an accident.

She was paid fifteen or twenty dollars a week after her return. Her brother also gave some of his earnings to his mother. She went home and took care of the mother, the son paying for the upkeep of the home, buying the mother's clothing and gave the sister money for her own clothing. The sister of the deceased took care of the mother and the house, did the cooking and ran the house and *what she received was for services rendered.* She handled the finances of the home, paying the grocery bills, and he gave her money in addition to the fifteen or twenty dollars per week. It appears that she was not hired by the day or week nor did she receive any regular amount, *that he gave her for her services whatever he could afford* and whatever was needed, that she went to Iowa to care for her sister and mother, the brother caring for her so she would not be in want and could depend upon him for her upkeep, and that he agreed to provide for her if she came back and stayed at home.

There is also the evidence of another witness that this brother told her to come back and take care of the house and *he would pay her a great deal more than she could earn in Chicago*, in the event of the mother passing out if she would still keep his house she could depend on him for the future." (Rec., 98-9.) (Italics ours.)

At page 18 counsel place great reliance on the sister's

answer to a leading question asked by her own counsel on redirect, that she was *not a servant*. Of course her conclusion in this respect would not be determinative.

The Supreme Court of Minnesota summarized the facts as follows:

> "The evidence showed that the Anderson family lived at Creston, Iowa, and that Ada C. was a member of the family until she became nineteen years of age, when she went to Chicago, where she obtained employment and supported herself for a period of about six years. In the meantime her father died, her mother, with a younger daughter and the son Elmer E. remaining in the old home. The mother's health became impaired and Elmer decided to induce Ada to return and take charge of the household and care for the mother. He went to Chicago in 1916 or 1917 and had a conversation with Ada, heard by a disinterested witness, who testified that he asked Ada to come home and *'take care of the house and he would pay her a great deal more money than she could earn in Chicago*, and in the event of the mother passing out, if she would still keep his home, she could depend on him for the future. * * * After the mother passed away she could still depend on him for her living and that he would look after her future.' Following this conversation Ada gave up her position in Chicago, went home and managed the household and cared for mother for about four years. Soon after her return her sister died and, on November 1, 1920, when Elmer lost his life, he and Ada and their mother constituted the family. From the time of Ada's return until November 1st, Elmer provided for the maintenance of the home and for her support. After his death and the death of her mother, Ada returned to Chicago, where she was earning a livelihood at the time of the trial." (Rec., 107 S., 207 N. W. 186.) (Italics ours.)

Counsel contend, pages 21 to 23, that the question of dependency is foreclosed because of the finding of the

jury, and they rely upon *Seaboard Air Line Ry. Co.* v. *Kenney*, 240 U. S. 489. In that case the question was not raised in the Supreme Court of the state, but in this case it was raised and passed upon by the Supreme Court of Minnesota, the court holding, as a matter of law, "that dependency may exist under the Federal Act although there is no actual necessitous want on the part of the alleged dependent and although it appeared that the sister had given up another occupation to manage the household, at the request of the brother, from whom she received money regularly for her support." (Syllabus by the Court in *Wells-Dickey Trust Co.* v. *C. B. & Q. R. R. Co.* 166 Minn. 79; 207 N. W. 186.)

An adult sister, claiming as a dependent next of kin under the Federal Act, must show actual inability to support herself, that she has been deprived of her means of support and left in want. At all times the sister has been a wage earner. She managed the household and cared for her aged mother pursuant to a definite arrangement with her brother. She was paid from $15 to $20 a week (Rec., 55), paid semi-monthly. (Rec., 56.) Such payments by the brother were contingent upon, and in consideration of, the services rendered by the sister. This arrangement might have been made by or with any competent housekeeper. It was conceded that if she had continued working in Chicago the brother would not have paid her anything. (Rec., 62.) It is not contended that if she had returned to Chicago prior to her brother's death, he would have paid her anything. We do not believe the Federal Act contemplates that able-bodied, adult, self-supporting, collateral relatives of deceased railway employees shall recover damages under such circumstances.

We respectfully submit that the judgment of the Supreme Court of the State of Minnesota should be reversed.

Respectfully submitted,

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Chas. Scott

Of Counsel.